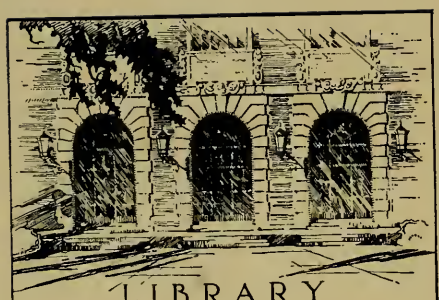

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WHAT REFORMS ARE DESIRABLE IN THE LICENSING LAWS?

A PAPER

READ AT

THE SOCIAL SCIENCE CONGRESS AT NOTTINGHAM

SEPT. 1882

BY

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SECOND EDITION

Printed by
SPOTTISWOODE & CO., NEW-STREET SQUARE, LONDON
1883

PREFACE

TO

THE SECOND EDITION.

I HAVE been asked to furnish further copies of my paper read before the Social Science Congress at Nottingham, and in issuing another edition I desire to draw attention to the important discussion of principles which has occurred since then at the Annual Meeting of the General Council of the United Kingdom Alliance held at Manchester on October 17, and also at a conference summoned by the Church of England Temperance Society at Oxford on October 30.

At the meeting of the General Council of the Alliance at Manchester, the following resolution was submitted for approval, viz. :—

'That, having regard to the number and magnitude of the evils—Social, Moral, and Political—constantly and inevitably resulting from the licensed sale of intoxicating liquors, this meeting is deeply convinced that the legislative suppression of the traffic has now become the greatest social problem of the age, and for its solution it urgently demands a practical and effective measure of Imperial Prohibition, or of Local Option.'

Seeing that many members of the Alliance (and I am one) are unable to give their approval to the proposal of Imperial Prohibition, the other alternative of Local Option alone commands the support of all the adherents of that body.

The question is, what principle or principles do these words Local Option cover? This is not a matter of mere words, as I shall proceed to show.

None can doubt the meaning which Sir Wilfrid Lawson attached to the expression, as on all occasions he has avowed

that the principle of his resolution was the same as the principle of the Permissive Bill, which, however, he withdrew from the House of Commons.

But while the words 'Local Option' cover that principle, it cannot be maintained by the Alliance that they cover that principle *and nothing more*, else why did Sir Wilfrid Lawson in March 1879, when he first submitted his resolution to Parliament, insert not the words 'Local Option,' but words accurately to express what was alone meant, namely, 'Permissive Prohibition'?

At the meeting of the General Council on October 17, I urged that the legislative application of the principle of Permissive Prohibition would, of itself, be inadequate as a means of checking existing intemperance. Because, in cases where a town or district was not prepared to vote for prohibiting the entire sale of drink, matters might go on as they were doing although the principle of Permissive Prohibition was in operation, and that principle accordingly required to be supplemented by another, namely, that of Local Popular Control. Under this second principle, if embodied in law, local communities may obtain the power of lessening the number of houses, of diminishing the hours of sale, of controlling the structural arrangements of houses, of securing an efficient system of inspection, &c., &c. Thus the people would be enabled to lessen the facilities for drinking and to minimise the evils connected with the system, and, where public sentiment permitted, to extinguish the traffic altogether.

At the Conference held at Oxford on October 30, the Bishop of Exeter presided, and there was a large attendance. After the Right Reverend Chairman, Sir Wilfrid Lawson was the first speaker, who explained the principle of the Permissive Bill, as a measure permitting the people to *veto* licenses in places where the people do not want them. The details of the Permissive Bill being objected to in Parliament, Sir Wilfrid stated that he had changed his tactics, but not his principles, and had introduced his Local Option resolution. This resolution had been adopted by the present Parliament, first by a majority of 26, and then by a majority of 42, where matters at present stand.

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Canon Ellison followed, and mentioned that for many years the Church of England Temperance Society had found themselves in entire agreement with the principle which Sir Wilfrid advocated; they differed from him only in the legislative application of it. Canon Ellison was at one with Sir Wilfrid in this, that whatever power the Legislature may give of dealing with the liquor traffic, that power should rest mainly with the people of *each* locality. But the power which he claimed for them was that of the entire control of the traffic. The right of control seemed to him to be almost a truism. He concluded his speech by moving the following resolution, viz.:

'That this Conference respectfully calls on Her Majesty's Government to introduce without further loss of time a measure of Licensing Reform. That the Conference is of opinion that to be satisfactory such a measure should give to the ratepayers of each locality a direct control over the licensed houses in their midst, with a restraining power on the issue and renewal of licenses. That in the opinion of the Conference, the control would be secured by the appointment of representative Boards elected for this special purpose.'

This resolution embodies the two principles of Local Popular Control and Permissive Prohibition, and it was passed by the meeting, after a full discussion, *nem. con.*

It thus appears that, at this moment there is a substantial agreement on the part of the United Kingdom Alliance and the Church of England Temperance Society in regard to the legal sanction of the two great principles of Local Popular Control and Permissive Prohibition, the question for solution being the proper method of giving effect to these principles in legislative enactment.

LIVERPOOL: *January* 1883.

WHAT REFORMS ARE DESIRABLE

IN THE

LICENSING LAWS?

I AM asked by the Standing Committee of the Economy Department of this Association to prepare a Paper on License Law Reform, and I have undertaken the duty, conscious I have to deal with a subject which is of vital importance while of acknowledged difficulty.

I propose to lead you to consider the principle of our License Law, under the conviction that such treatment of the question will prove interesting to those who are ready to devote their attention to a matter so intimately affecting both the moral and social condition of their fellow-citizens, and I ask your sustained attention, because the principle on which law may be founded ultimately rules the conduct of the members of a commonwealth, just as the stability of a building is determined by its foundations; or, to use another illustration, as the future crop is determined by the seed we put into the ground. It is not possible, accordingly, to over-estimate the importance of securing for our laws a moral basis, seeing that the administration of such laws will bring about results that are salutary; while, on the other hand, laws unregulated by a moral principle can only produce effects that are pernicious.

It is important to see how this applies to the system of licensing the sale of alcoholic drinks. We may safely affirm, that no country having regard to the welfare of the people would begin a system of licensing such as now exists in England. It has grown up on imperfect information, and in the course of many years, and has been the means of placing in the hands of the few a monopoly of enormous value, which unhappily is used most unscrupulously for selfish ends in the accumulation of wealth, regardless of the frightful cost to the community of pauperism, crime, and death.

Yet our Government has introduced into India this very system of licensing for purely revenue purposes without regard to the welfare of the people, and the same evil results as are experienced at home are already attending it there. But a law so based cannot be morally right.

The improvement of our own national life is an object worthy enough for this gathering; but, feeling profoundly as I do the influence exercised by England in its wide Empire and in other countries, I would here venture the thought, that just as England may legislate on foundation principles of morality and justice, so are these principles likely to have general acceptance and currency. And, on the other hand, that an unjust and unrighteous principle of law, accepted by England, throbs its malign influences to the ends of the earth.

The four chief licenses which regulate the retail sale of intoxicating liquors in the United Kingdom are the following, viz.:—

1. Public-house licenses— These licenses are issued on the principle of 'magisterial discretion.' There were in existence in March, 1881 . . .	96,846
2. Beer-house licenses— These, up to 1869, were issued by the Excise on the principle of 'freedom of trade'—of these there were in existence in March, 1881	39,477
3. Licenses for the sale of beer 'off' the premises— These licenses have also been issued by the Excise on the principle of 'freedom of trade'—of these there were in existence in March, 1881	18,924
4. Grocers' licenses— These, too, are granted by the Excise on the principle of 'freedom of trade.' There were in existence in March, 1881 . .	14,150
In all, licenses . .	169,397

Against about 159,000 such licenses in existence in 1878. ([1])

[1] I may here recapitulate the leading features of the above licenses:—

1. Public-house licenses,

For the sale of spirits, wine, and beer, for consumption 'on' or 'off' the premises.

These houses are licensed under the Act 9 George IV., cap. 61, and clause 1 ends as follows:—

'Be it therefore enacted . . . . that it shall be lawful for the justices . . .

It thus appears, in reference to the Acts authorising the above four principal licenses, that one has been framed on the principle of 'magisterial discretion'; two have been framed on the principle of 'freedom of trade' (a principle which Parliament has, in the case of both the beer-house licenses, now

to grant licenses, for the purposes aforesaid, *to such persons as they, the said justices, shall, in the execution of the powers herein contained, and in the exercise of their discretion, deem fit and proper.*'

Thus the principle on which these licenses are issued is solely that of 'magisterial discretion.' The Acts for Scotland and Ireland are, in their main points connected with this subject, substantially the same as for England. On March 31, 1881, the number of these licenses in existence was 96,846

2. Beer-house licenses.

The Beer Act, passed by the Duke of Wellington's Government (usually attributed to Lord Brougham) in 1830, allowed 'freedom of trade' in the sale of beer; licenses under this head having been granted by the Excise, and having been, till 1869, beyond the control of the magistrates. The Selwyn-Ibbetson Act of 1869, so far as regards the retail sale of beer 'on' the premises, was, however, a distinct protest against the previous 'free trade' measure. Unfortunately, by overlooking the recommendations of the Committee of 1854, namely, in favour of the entire extinction of the beer-shop license, the higher duty to be levied on the remaining uniform license, and the stringent enforcement of penalties, it did, in fact, perpetuate the evil against which that Committee and previous ones had borne the very strongest testimony. The beer-house licenses, though now no longer increased *ad libitum*, still remain to the number of 39,477

3. Licenses for the sale of beer to be drunk 'off' the premises.

These have been granted on the principle of 'freedom of trade,' and are of two kinds, viz.:—

1. Those granted under the original Beer Act of 1830, which were, until this year, free from the discretion as to numbers of any authority. They are now, with Class No. 2, placed, by Mr. Ritchie's Bill just passed, under the 'discretion' of the magistrates, the same as licenses to publicans.

2. The second class of beer-houses, for sale by retail and for consumption 'off' the premises, are described as 'additional licenses' granted to 'beer dealers' who have licenses for wholesale purposes. The number of both these classes was, during the year ending March, 1881 18,924

4. Grocers' licenses. First created in 1860 and 1861.

These are beyond magisterial control, and are granted on the principle of 'freedom of trade.'

For the sale of 'spirits' to be consumed 'off' the premises, there were 6,490

For the sale of 'wines' to be consumed 'off' the premises, there were 7,660

Say in all—Grocers' licenses . . . 14,150 — 14,150

In existence March, 1881—licenses . 169,397

renounced); and one, the Act authorising grocers' licenses, was framed on the principle of 'freedom of trade,' the principle which still regulates their issue. This anomaly is not, however, likely long to continue.

Although the pressure of public opinion has now caused Parliament to place the two beer-house licenses under 'magisterial discretion,' yet neither under a law thus framed, nor if framed under the principle of 'freedom of trade,' have the people 'freedom of protecting themselves' from the sale of an article which they find not only to be dangerous but destructive.

In the issue of none of the above 169,000 licenses have the people of the districts had any voice, nor after their issue have the inhabitants had any power to regulate or control the sale either of the spirits or the beer disposed of, however injurious such sale might have been proving. The magistrates or the Excise having once granted the license, the pretension has been that the license existed for all time, and, except by its forfeiture from improper conduct, the holder has been led to consider that the license, though granted to him without premium, belonged to him as his vested right, whereas the Act of 9 George IV., cap. 61, expressly restricts the duration of the license to '*one whole year and no longer.*'

It is lamentable to reflect how completely this country has been handed over by Parliament to publicans and brewers by recent legislation. The beer-house license, under the Act of 1830, not having been found to work well, and great dissatisfaction having been felt in certain parts of the country with the principle on which licenses for public-houses were granted, the House of Commons, on April 12, 1853, appointed a Select Committee, with the following instructions, viz.:—

'To examine into the system under which public-houses, hotels, beer-shops, dancing saloons, coffee-houses, theatres, temperance hotels, and places of public entertainment, by whatever name they may be called, are sanctioned and are now regulated, with a view of reporting to this House whether any alteration or amendment of the law can be made for the better preservation of public morals, the protection of the revenue, and for the proper accommodation of the public.'

In 1854 that Committee reported, and their recommendations, unhappily, were in favour of 'freedom of trade' in licensing, accompanied, however, by suggestions in favour of a higher duty on licenses, of taking sureties for good behaviour from the licensee, and of the appointment of inspectors for public-houses. Although no legislation followed that report,

yet the procedure of magistrates throughout the country, in administering the Act 9 George IV., has been greatly influenced by its free-trade recommendations. Thus, during the past fifty years, our magistrates have granted an undue number of public-house licenses, and Parliament has, with the exception of the Acts of 1872 and 1882, legislated generally in favour of 'freedom of trade' in the sale of intoxicating liquor.

The wishes and the welfare of the people ought all along to have been consulted with regard to the licenses issued; and I contend that existing laws, giving to the magistrates, or the Excise, power to grant licenses for the sale of an article of such insidious potency and danger as alcohol irrespective of the wishes of communities, are fundamentally wrong, and are in their operation an infraction of the rights of the people of a free country. At the door of our Parliament lies much of the blame of our national vice of intemperance. The people have been encouraged to the excessive drinking of alcohol by the undue facilities and temptations afforded by our license laws, which have been constructed on the vicious principle that temptation may with propriety be placed by the magistrates, or the Excise, in the way of the people without their being consulted, and that such temptation may properly exist, after proof that the people suffer from it.

To all such principles of law I am utterly opposed, involving as they do cruel injustice, and granting a monopoly and riches to the few, at the cost of national demoralisation.

I now come to consider the principles on which a righteous license law can be constructed, and I beg to repeat my conviction—that it is unjust and immoral to allow the magistrates, or the Excise, power to plant amongst the people, contrary to their wishes, houses where an article dangerous to their welfare is sold. My conviction is—that in the sale of alcohol the people are entitled to self-government, a principle which is already conceded in regard to the administration of the poor laws, sanitary regulations, and the great subject of elementary education. It is extraordinary that while the care of the poor is confided to Boards elected by the people for the purpose, the main cause producing poverty should be placed beyond their reach, and the excessive sale of alcohol be encouraged, without any powers being afforded them to limit or arrest it. It is accordingly reasonable that the principle be admitted—that *the whole control of the sale of alcohol should be lodged in the people themselves, through their elected representatives, the action of such representative Boards to be limited and controlled by Imperial authority.*

This principle — namely, local popular control of all licenses, accompanied by Imperial limitations and restrictions— is that now happily adopted by the Church of England Temperance Society. In an able paper recently issued by the chairman (Canon Ellison), he refers to the extent of the control to be exercised locally, as follows:–

'To be worthy of its name, the control must extend, not only to the granting or refusing of new licenses, but to the reduction of existing houses, the regulation of hours, limitation of the structure and size of houses, their inspection, and the enforcement of penalties against transgressors of the law.'

In these views I heartily and entirely concur. Canon Ellison goes on to say:—

'That this would, logically, embrace the power of prohibition is evident. But such a power—containing, as it does, a new principle of legislation—must be regarded as a separate issue, to be decided by the Legislature on its own merits; its adoption or rejection by Parliament in no way affecting the main question of the general control to be vested in the ratepayers.'

The United Kingdom Alliance have not, as an organisation, seen their way to declare for the whole principle for which I contend—namely, 'popular and Imperial control.' They content themselves with agitating for one important section of the principle—namely, 'for power to the people to prohibit the sale of alcohol.' But prohibition is, so to speak, only one segment of the whole circle of popular control, and however indispensably necessary would, of itself, be inadequate.

I entirely agree with the United Kingdom Alliance in their demand, and feel assured it must ultimately be granted by the Legislature. The advantages to themselves and their families of living within prohibited areas are being more and more fully recognised by the people of this country. Take a case in Liverpool, the city with which I am connected. The firm of Mr. John Roberts, M.P. for the Flintshire Boroughs, has had large dealings in land in Liverpool. Mr. Roberts' firm has acted on the principle of prohibiting the erection of public-houses on the estates, large and small, which they purchase. Mr. Roberts states, with regard to the effect of these restrictions from a land or property-owner's point of view, that the fullest experience confirms him in his conviction, that they add, generally and substantially, to the value of the property. Mr. Roberts has heard of no complaints from house-owners, or the tenants, of any inconvenience suffered by those living in the districts, although some of the people living within the area to

which the prohibition applies would have to walk three-quarters of a mile to obtain a glass of beer. This testimony is the more striking, arising as it does in a city so over-supplied with public-houses as Liverpool. The quantity of land laid out, or in course of being laid out, by Mr. Roberts' firm, subject to absolute restrictions against public-houses, is now, roughly speaking, about 350 acres. The number of houses will be about 10,000, and the population affected may be estimated at 60,000. This is exclusive of other small portions of land dealt with by Mr. Roberts' firm in a similar way in the neighbourhood of Liverpool.

It is very much to be regretted that the ecclesiastical authorities holding Church property in London, and in various other parts of the country, have not so acted in regard to the lands in their possession, and the public will naturally look with deep interest to the decision which may be arrived at on the appeal recently made to them by the Rev. Canon Wilberforce.

Last year Mr. W. S. Caine, a leading member of the United Kingdom Alliance, gave notice in the House of Commons of the following resolution, namely:—

'That, in the opinion of this House, the Government measure embodying the Local Option resolution passed by the House on June 18, 1880, while clearly defining the principles and conditions that are to regulate the sale of exciseable liquors, should entrust the administration of the law to boards specially elected for the purpose by the ratepayers, leaving the jurisdiction affecting branches of the law, as at present, to the ordinary tribunals of justice.'

This resolution embodies the two principles I now beg to submit to the approval of the Congress, namely:—

First—Local popular control of the sale of intoxicating liquors, through boards specially elected for the purpose by the ratepayers; and,

Second—Imperial control of such sale, within the limits and regulations imposed by Parliament.

No opportunity has yet offered for the discussion of this important resolution. It is earnestly to be hoped that all Temperance friends, of all shades of political opinion, may rally round Mr. Caine in his effort to obtain the sanction of Parliament to the great principles of license law which his resolution embodies.

It is greatly in favour of such a resolution that the Report of the Lords' Committee on Intemperance should encourage the idea of allowing localities to try experiments in dealing

with the liquor question. The first recommendation of the Report of the Lords' Committee is as follows, namely:—

'That legislative facilities should be afforded for the local adoption of the Gothenburg and of Mr. Chamberlain's schemes, or of some modification of them.'

This recommendation refers to experiments to be made by localities at their own cost, that is, by buying up existing interests, and it is founded on the experience of Gothenburg in Sweden, where the sale of drink is carried out by a syndicate of the inhabitants, who apply the profits not to their own personal advantage, but to public uses.

When the Report was drawn up, the Lords' Committee were not aware of Mr. Roberts' plans, else doubtless he would have been summoned as a witness, and public attention would thus have been called to so valuable an experiment.

The Lords' Committee, in the 36th clause of their Report, in a noble passage of great power, argue for the granting to communities opportunity to purify themselves from the miseries of intemperance by methods such as those adopted at Gothenburg, or sketched by Mr. Chamberlain. The passage is as follows:—

'When great communities, deeply sensible of the miseries caused by intemperance; witnesses of the crime and pauperism which directly spring from it; conscious of the contamination to which their younger citizens are exposed; watching with grave anxiety the growth of female intemperance, on a scale so vast and at a rate of progression so rapid as to constitute a new reproach and danger; believing that not only the morality of their citizens, but their commercial prosperity, is dependent upon the diminution of these evils; seeing also that all that general legislation has been hitherto able to effect has been some improvement in public order, while it has been powerless to produce any perceptible decrease of intemperance; it would seem somewhat hard when such communities are willing, at their own cost and hazard, to grapple with the difficulty and undertake their own purification, that the Legislature should refuse to create for them the necessary machinery, or to entrust them with the requisite powers.'

It is difficult to see how such experiments could be tried unless after placing the control of licenses, as has been done in Sweden, under boards popularly elected for the purpose, and I conclude accordingly that the Lords' Committee have reported, practically, in harmony with the views expressed in this paper.

The only other matter with which I wish to detain the

Congress is—the area of the proposed licensing districts. This is a very important matter of detail.

The United Kingdom Alliance claim that country parishes and the voting wards of boroughs should have powers granted them of vetoing the sale of drink in their respective districts by direct vote.

To this proposal I do not think there are reasonable objections. But the parish, or the voting ward of the borough, would be too small as the area of the licensing district. None of the existing areas is altogether satisfactory for the proposed new licensing district; the best area is that of the poor-law union.

The areas of our poor-law unions are sufficiently wide to secure a selection for the license boards of capable and independent men. There are 640 unions and single parishes (which are held to be unions as they are large parishes) in England and Wales. This, for a population of say 26,000,000, would give an average of something more than 40,000 persons in each union.

Poor-law guardians are elected for only one year, but this would be too short a term of office for the license board. I would suggest that the term for which they are elected should be three years, one-third of their number to retire annually, being eligible for re-election.

The elections for the license boards could be made on the same day, and by the same returning-officer, as elections for the poor-law guardians, and thus the objections raised by some to the cost and trouble of a new board would be minimised, and perhaps would be little felt.

I would be thankful if the views expressed in this Paper approve themselves to the Congress, and if so, I would beg them to memorialise the Prime Minister in favour of transferring the licensing authority from magistrates to license boards, elected by the ratepayers for the purpose, with such Imperial safeguards as may be deemed needful.

LONDON: PRINTED BY
SPOTTISWOODE AND CO., NEW-STREET SQUARE
AND PARLIAMENT STREET